OXT (a child applying through Ong Chin Hock, the biological father) v Pendaftar Besar Kelahiran dan Kematian Malaysia & Anor

HIGH COURT (IPOH) — ORIGINATING SUMMONS NO AA-34–3–12 OF 2019
ABDUL WAHAB J
1 DECEMBER 2021

Citizenship — Operation of law, by — Declaration for — Five-year-old girl born after Malaysia Day to Malaysian father and China-national mother sought court declaration that she was Malaysian citizen by operation of law — Article 14(1)(b) read with ss 1(a) and (e) of Part II of Second Schedule of Federal Constitution ('FC') — Malaysian authorities argued girl had to follow mother's nationality pursuant to s 17 of Part III of Second Schedule of FC because she was born illegitimate — Whether evidence showed child was stateless — Whether even if child could not qualify for citizenship by operation of law under s 1(a) of Part II of Second Schedule of FC, she qualified for same under s 1(e) — Whether child's earlier application to government for citizenship by registration under art 15A of FC did not bar her application to court

The plaintiff, applying through her biological father, Ong Chin Hock, a Malaysian citizen, in the instant proceeding, sought a court order directing the Director-General of Births and Deaths, Malaysia, to re-register her as a Malaysian citizen legitimately born to Ong Chin Hock and her biological mother, Luo Zhijuan, a citizen of the People's Republic of China. To support her application, the plaintiff relied upon: (a) an order issued by the High Court at Ipoh declaring that she was the legitimate child of the said Ong Chin Hock and Luo Zhijuan; and (b) the result of a DNA test done by the Chemistry Department confirming that the two were her biological parents. When the plaintiff was born in Ipoh, Perak, on 24 June 2016, her parents were not legally married to each other. As a result, the plaintiff's birth certificate described her as a non-citizen. The plaintiff contended that she never had a passport, had never left Malaysia and was not a citizen of any other country. Three months after the plaintiff's birth, her parents registered their marriage in Malaysia. In 2017, the plaintiff, through her father, applied for citizenship by registration pursuant to art 15A of the Federal Constitution ('the FC') but she never received a reply. Vide the instant application, the plaintiff sought to be conferred Malaysian citizenship by operation of law pursuant to art 14(1)(b) of the FC read together with s 1(a) and 1(e) of Part II of the Second Schedule of the FC on the ground that she had fulfilled the requirement of being born in Malaysia after Malaysia Day to a Malaysian father. The respondents objected to

the application saying that since the plaintiff was born illegitimate, she could only follow her mother's nationality as prescribed by s 17 of Part III of the Second Schedule of the FC. The respondents denied that the plaintiff was stateless.

Held, allowing the plaintiff's application:

(1) The plaintiff had satisfied the requirement in s 1(a) of Part II of the Second Schedule of the FC in that she was born within the Federation after Malaysia Day and at the time of her birth her father was a Malaysian citizen. The respondents contended that since the plaintiff was born illegitimate, s 17 of Part III of the Second Schedule of the FC would apply so that the plaintiff had to follow her mother's nationality. The respondents relied upon the majority decision of the Federal Court in *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236. *CTEB* was distinguishable as it related to an interpretation of s 1(b), and not s 1(a), of Part II of the Second Schedule of the FC, that legitimacy should be considered at the point of the originating summons application, and that where the court did not need to rely on an interpretation tool such as s 17 of Part III, it need not refer to it (see paras 43–45).

(2) The plaintiff's satisfaction of the criteria under s 1(a) was supported by the Ipoh High Court's 4 September 2019 decision declaring the plaintiff as the legitimate child of her Malaysian father, Ong Chin Hock, while the official DNA report from the Chemistry Department further strengthened the plaintiff's case that Ong Chin Hock and Luo Zhijuan were her biological parents (see para 46).

(3) Article 8 of the FC guaranteed equal treatment to all persons and prohibited discrimination against citizens. The plaintiff's right to citizenship *jus sanguinis* vide her father had to be recognised. Article 8 would be breached if a distinction was drawn against fathers and against illegitimate children if s 17 of Part III of the Second Schedule of the FC was applied to s 1(a) (see para 47).

(4) Assuming this court was wrong in finding that the plaintiff had satisfied the requirement under s 1(a) of Part II of the Second Schedule of the FC to qualify for citizenship by operation of law, she had, nevertheless, fulfilled the criteria under s 1(e) of Part II of the Second Schedule of the FC to qualify for such citizenship. Reading s 1(e) with s 2(3) of Part II of the said Second Schedule, the plaintiff would be disqualified from getting citizenship only if she had secured citizenship of another country at birth or during a period of one year after her birth. In this respect, the evidence showed that the plaintiff was stateless. She was therefore automatically entitled to Malaysian citizenship by operation of law pursuant to s 1(e) (see paras 48–49 & 51–55).

(5) The fact that the plaintiff had applied for citizenship by way of registration under art 15A of the FC to which the authorities had never replied did not bar her from making the instant application. Her application was made in 2017 and she and her parents could not be expected to wait indefinitely for a decision on the same. Nowhere in the FC was it stated that an art 15A application must be pursued with first before an application premised upon art 14(1)(b) of the FC could be brought. The paths to citizenship under arts 14 and 15A were distinct and separate and neither one was subservient or secondary to the other. Even if the plaintiff's art 15A application had been rejected, that would not bar her from seeking redress before this court (see paras 24–30).

[Bahasa Malaysia summary

Plaintif, memohon melalui bapa kandungnya, Ong Chin Hock, warganegara Malaysia, dalam prosiding ini, memohon perintah mahkamah mengarahkan Ketua Pengarah Kelahiran dan Kematian, Malaysia, untuk mendaftarkan semula beliau sebagai warganegara Malaysia yang dilahirkan secara sah kepada Ong Chin Hock dan ibu kandungnya, Luo Zhijuan, warganegara Republik Rakyat China. Untuk menyokong permohonannya, plaintif bergantung kepada: (a) perintah yang dikeluarkan oleh Mahkamah Tinggi di Ipoh yang mengisytiharkan bahawa dia adalah anak sah Ong Chin Hock dan Luo Zhijuan; dan (b) hasil ujian DNA yang dilakukan oleh Jabatan Kimia. mengesahkan bahawa kedua-duanya adalah ibu bapa kandungnya. Ketika plaintif dilahirkan di Ipoh, Perak, pada 24 Jun 2016, ibu bapanya tidak sah bernikah antara satu sama lain. Akibatnya, sijil kelahiran plaintif menggambarkannya sebagai bukan warganegara. plaintif menegaskan dia tidak pernah memiliki pasport, tidak pernah meninggalkan Malaysia dan bukan warganegara mana-mana negara lain. Tiga bulan selepas kelahiran plaintif, ibu bapanya mendaftarkan perkahwinan mereka di Malaysia. Pada 2017, plaintif, melalui bapanya, memohon kewarganegaraan melalui pendaftaran menurut perkara 15A Perlembagaan Persekutuan ('PP') tetapi dia tidak pernah menerima jawapan. Melalui permohonan ini, plaintif memohon untuk dianugerahkan kewarganegaraan Malaysia melalui kuat kuasa undang-undang menurut perkara 14(1)(b) PP yang dibaca bersama s 1(a) dan s 1(e) Bahagian II Jadual Kedua PP atas alasan bahawa dia telah memenuhi syarat dilahirkan di Malaysia selepas Hari Malaysia kepada seorang bapa Malaysia. Responden membantah permohonan itu dengan mengatakan bahawa sejak plaintif dilahirkan sebagai tidak sah taraf, dia hanya boleh mengikut kewarganegaraan ibunya seperti yang ditetapkan oleh s 17 Bahagian III Jadual Kedua PP. Responden menafikan bahawa plaintif tidak bernegara.

Diputuskan, membenarkan permohonan plaintif:

(1) Plaintif telah memenuhi keperluan dalam s 1(a) Bahagian II Jadual Kedua PP iaitu dia dilahirkan dalam Persekutuan selepas Hari Malaysia

dan pada masa kelahirannya bapanya adalah warganegara Malaysia. Responden berpendapat bahawa oleh kerana plaintif dilahirkan sebagai tidak sah taraf, s 17 Bahagian III Jadual Kedua PP akan terpakai supaya plaintif perlu mengikut kewarganegaraan ibunya. Responden bergantung kepada keputusan majoriti Mahkamah Persekutuan dalam *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236. *CTEB* boleh dibezakan kerana ia berkaitan dengan tafsiran s 1(b), dan bukan s 1(a), Bahagian II Jadual Kedua PP, bahawa kesahihan harus dipertimbangkan pada masa permohonan saman pemula, dan di mana mahkamah tidak perlu bergantung pada alat tafsiran seperti s 17 Bahagian III, ia tidak perlu merujuk kepadanya (lihat perenggan 43–45).

(2) Plaintif yang telah memenuhi kriteria di bawah s 1(a) disokong oleh keputusan Mahkamah Tinggi Ipoh pada 4 September 2019 yang mengisytiharkan plaintif sebagai anak sah kepada bapanya warga Malaysia, Ong Chin Hock, manakala laporan DNA rasmi daripada Jabatan Kimia mengukuhkan lagi kes plaintif bahawa Ong Chin Hock dan Luo Zhijuan ialah ibu bapa kandungnya (lihat perenggan 46).

(3) Perkara 8 PP menjamin layanan sama rata kepada semua orang dan melarang diskriminasi terhadap warganegara. Hak plaintif untuk mendapat kewarganegaraan *jus sanguinis* vide bapanya perlu diiktiraf. Perkara 8 akan dilanggari jika perbezaan dibuat terhadap bapa dan anak tidak sah taraf jika s 17 Bahagian III Jadual Kedua PP digunakan pada s 1(a) (lihat perenggan 47).

(4) Dengan mengandaikan mahkamah ini salah apabila mendapati bahawa plaintif telah memenuhi keperluan di bawah s 1(a) Bahagian II Jadual Kedua PP untuk melayakkan diri untuk kewarganegaraan melalui kuat kuasa undang-undang, dia telah, bagaimanapun, memenuhi kriteria di bawah s 1(e) Bahagian II Jadual Kedua PP untuk melayakkan diri untuk kewarganegaraan tersebut. Membaca s 1(e) dengan s 2(3) Bahagian II Jadual Kedua tersebut, plaintif akan hilang kelayakan daripada mendapat kewarganegaraan hanya jika dia telah memperoleh kewarganegaraan negara lain semasa lahir atau dalam tempoh satu tahun selepas kelahirannya. Dalam hal ini, bukti menunjukkan bahawa plaintif tidak bernegara. Oleh itu, dia secara automatik berhak mendapat kewarganegaraan Malaysia melalui penguatkuasaan undang-undang menurut s 1(e) (lihat perenggan 48–49 & 51–55).

(5) Hakikat bahawa plaintif telah memohon kewarganegaraan melalui pendaftaran di bawah perkara 15A PP yang tidak pernah dijawab oleh pihak berkuasa tidak menghalangnya daripada membuat permohonan ini. Permohonannya dibuat pada 2017 dan dia dan ibu bapanya tidak boleh dijangka menunggu selama-lamanya untuk keputusan mengenai perkara yang sama. Tiada mana-mana pun dalam PP menyatakan

bahawa permohonan perkar 15A mesti diteruskan terlebih dahulu sebelum permohonan yang berasaskan kepada perkara 14(1)(b) PP boleh dimulakan. Laluan untuk memperoleh kewarganegaraan di bawah perkara 14 dan perkara 15A adalah berbeza dan berasingan dan tidak satu pun yang subordinat atau sekunder kepada yang lain. Walaupun permohonan perkara 15A plaintif telah ditolak, itu tidak akan menghalangnya daripada mendapatkan ganti rugi di hadapan mahkamah ini (lihat perenggan 24–30).]

Cases referred to

Alma Nudo Atenza v PP and another appeal [2019] 4 MLJ 1; [2019] 5 CLJ 780, FC (refd)

CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] 4 MLJ 236; [2021] 6 CLJ 471, FC (distd)

Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener) [2010] 2 MLJ 285, FC (refd)

Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545, FC (refd)

Lim Wan Feng v Lim Kiew Poh & Ors [2020] 1 LNS 2370, HC (refd)

Madhuvita Janjara Augustin (suing through next friend Margaret Louisa Tan) v Augustin a/l Lourdsamy & Ors [2018] 1 MLJ 307; [2018] 4 CLJ 758, CA (folld)

Pendaftar Besar Kelahiran dan Kematian, Malaysia v Pang Wee See & Anor (applying on their behalf and as litigation representatives for Pang Cheng Chuen, a child) [2017] 3 MLJ 308, CA (refd)

Pham v Secretary of State for the Home Department [2015] 3 All ER 1015, SC (refd)

Robin Tan Pang Heng @ Muhammad Rizal bin Abdullah (suing as public officer at Penang Turf Club) v Ketua Pengarah Kesatuan Sekerja Malaysia & Anor [2011] 2 MLJ 457; [2010] 9 CLJ 505, FC (refd)

Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561, FC (refd)

Sivarasa Rasiah v Badan Peguam Malaysia & Anor [2010] 2 MLJ 333; [2010] 3 CLJ 507, FC (refd)

Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased) [2020] 4 MLJ 721; [2020] 7 CLJ 561, FC (folld)

The Speaker of Dewan Undangan Negeri of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v Ting Tiong Choon & Ors and other appeals [2020] 4 MLJ 303; [2020] 3 CLJ 757, FC (refd)

Legislation referred to

Citizenship Rules 1964 r 12

Federal Constitution arts 8, 14, 14(1)(b), 15A, Second Schedule, Part II,

ss 1(a), (b), (e), 2(3), Part III, ss 2, 17

Abdul Wahab J:

INTRODUCTION

[1] This is an application by the plaintiffs vide Originating Summons in No AA-34–3–12 of 2019 dated 20 December 2019 seeking for, inter alia, the following reliefs:

(a) Bahawa Ketua Pendaftar Kelahiran dan Kematian Malaysia mendaftarkan semula taraf kewarganegaraan OXT sebagai warganegara Malaysia;

(b) Bahawa Ketua Pendaftar Kelahiran dan Kematian Malaysia mendaftarkan semula kelahiran OXT sebagai orang yang sah taraf dan menamakan Ong Chin Hock (No. K/P: 830205–08–5179) sebagai bapa bilogikal (biological father) dan Luo Zhijuan (Pasport China: E49846399) sebagai ibu bilogikal (biological mother).

[2] The plaintiff essentially seeks to be declared a citizen of Malaysia under art 14(1)(b) of the Federal Constitution. The respondents, the Registrar of the National Registry Department and the Government of Malaysia, objects to the plaintiff's application. In doing so, parties filed the following cause papers:

(a) *saman pemula* dated 20 December 2019;

(b) *afidavit sokongan plaintif* affirmed on 23 October 2019;

(c) *afidavit jawapan responden* affirmed on 24 February 2020; and

(d) *afidavit balasan kepada afidavit jawapan responden* affirmed on 24 June 2020.

[3] This application was first heard online over Zoom on 27 August 2021, and thereafter physically in person upon the request of parties on 10 September 2021. Both parties filed extensive submissions, reply submissions, additional submissions and skeletal speaking notes, of which I thank parties for their able submissions. I have read and considered both oral and written submissions of parties with a fine toothcomb and the following are my findings of this matter.

BACKGROUND FACTS

[4] The plaintiff is a female child born on 24 June 2016 in KPJ Ipoh Specialist Hospital, Perak to a Malaysian father, Mr Ong Chin Hock, and a mother of People's Republic of China national named Mdm Luo Zhijuan.

[5] The plaintiff's parents were not legally married to each other at the time

of the plaintiff's birth. The birth certificate of the plaintiff states the plaintiff as a non-citizen or 'Bukan Warganegara'.

[6] The plaintiff does not possess a passport and has never left Malaysia since the time she was born. There is no evidence before this court that the plaintiff holds a passport or citizenship of the People's Republic of China or any other country. Three months after the plaintiff's birth, the parents legally registered their marriage at Ibu Pejabat JPNM Putrajaya on 5 September 2016.

[7] The High Court in Ipoh had on 4 September 2019 declared that the plaintiff is the legitimate child of the parents, Ong Chin Hock and Luo Zhijuan. The Chemist Department had through an official DNA report dated 18 November 2019 confirmed that Ong Chin Hock and Luo Zhijuan are the biological father and mother of the plaintiff.

[8] Prior to this application, the application for legitimacy and the DNA test, the plaintiff's father had made a written application to the Home Minister under art 15A of the Federal Constitution on 9 August 2017. There has however been no response, rejection, approval or otherwise, from the esteemed Minister until today.

[9] The plaintiff moves this court under art 14(1)(b) of the Federal Constitution, read together with Part II, s 1(a) and (e) of the Second Schedule, that she be declared a Malaysian citizen by operation of law on the following grounds:

(a) that she is born in Malaysia after Malaysia Day; and

(b) that her father is a Malaysian.

[10] The respondents, the National Registry Department and the Government of Malaysia, objects to the plaintiff's application on the ground that as the plaintiff's parents were not married at the time of her birth, she is thus illegitimate and therefore Part III, s 17 of the Second Schedule of the Constitution will carry effect in which the plaintiff can only follow her mother's nationality which is that of the People's Republic of China. The respondents also rejects the assertion that the plaintiff is 'stateless'.

ISSUES FOR DETERMINATION

[11] The main issue which arises for this court's determination is whether the plaintiff has satisfied the qualifications for citizenship, by operation of law, as set out in the Federal Constitution.

[12] However, I observe that there are preliminary issues raised by the

respondents in the present case which requires this court's prior determination before moving on to the main issue in question as follows:

(a) whether this court can deliberate on whether the decision of JPN is justiciable. And if justiciable, whether the decision of *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236; [2021] 6 CLJ 471 renders this application bound to be dismissed ('issue of justiciability'); and

(b) whether the child can apply for this originating summons when the father's application under art 15A of the Federal Constitution, to the Home Minister is still pending ('issue of alternative remedy').

Issue of justiciability

[13] This is a threshold issue being that whether the respondents' refusal to recognise the plaintiff's citizenship is justiciable or not, before this court. In s 2 of Part III of the Second Schedule, it is stated that, 'A decision of the Federal Government under Part III of this Constitution shall not be subject to appeal or review in any Court'.

[14] The respondents' decision to deny citizenship of the plaintiff due to the Government's interpretation of Part III, s 17 of the Second Schedule may be strictly speaking, non-justiciable by operation of s 2 of the same Part. Meaning, this court would not or should not have the duty to subject the respondents' decision to a review.

[15] On the principle of justiciability, the Court of Appeal had in the case of *Madhuvita Janjara Augustin (suing through next friend Margaret Louisa Tan) v Augustin a/l Lourdsamy & Ors* [2018] 1 MLJ 307; [2018] 4 CLJ 758 held as follows:

> [26] We start with a few preliminary issues; first of which is the issue of justiciability of the matter, the argument being that a decision under Part III of the Federal Constitution is non-justiciable. Section 2 of Part III of the Second Schedule reads:
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> > A decision of the Federal Government under Part III of this Constitution shall not be subject to appeal or review in any Court.
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> [27] Section 2 above stands as an ouster clause. Parliament, in all its wisdom has seen it fit that decisions of the federal government under Part III of the Federal Constitution are not to be subject to appeal or review in any court. Now, as an ouster clause, and that will include such a clause sited in the Federal Constitution, which serves to limit and oust the jurisdiction of the court, s 2 must be read strictly. This is because the courts guard its jurisdiction and powers responsibly and for many more good reasons which do not require examination or expansion for the present purposes.

[28] It is quite clear from the carefully worded terms of s 2 that the scrutiny of the court is only excluded where it concerns a decision of the federal government made under Part III of the Federal Constitution. It is apparent from the records of appeal that the court was not moved to hear an appeal or review of any decision made by the federal government under Part III, and that includes the federal government's rejection of the appellant's application for citizenship under art 15A. That decision of the federal government is not under challenge. In fact, no decision of the federal government is in the facts of the present appeal. It is further clear from the cause papers and submissions before us that the decision of the federal government under art 15A in respect of the appellant remains with the executive government.

[29] But, that is not to say that the court may not refer to that decision in the course of its deliberations on the appellant's application. Neither can it be right nor may it be suggested to be the intention of Parliament as set out in s 2 above, that the court cannot make any pronouncements on citizenship under Part III of the Federal Constitution. Matters concerning citizenship, as are a whole host of other subject matters found in the Federal Constitution are within the purview of the courts. It is only the decisions of the federal government under Part III that are not open to appeal or review in any court.

[30] In the originating summons filed by the appellant, the appellant sets out her prevailing facts and conditions before she invites the court to make certain declaratory orders on her status in respect of her claim for citizenship. When considering such an application, the court is far from sitting on appeal or review, let alone appeal or review of a decision already made by the federal government under Part III of the Federal Constitution. We, therefore, do not agree with the learned judge in this regard.

[31] We observed that the learned judge agreed with the submissions of the learned SFC that the matter before her is non-justiciable. Before leaving this first issue, we must correct the use of the term, 'non-justiciable'.

[32] The presence of an ouster clause of some degree or extent in its application found in s 2 of Part III of the Second Schedule is to our minds, not the same as saying that the matter is non-justiciable. Although the decisions in *Kuluwante (an infant) v Government of Malaysia & Anor* [1978] 1 MLJ 92; *Andrew s/o Thamboosamy v Superintendent of Pudu Prisons, Kuala Lumpur* [1976] 2 MLJ 156; and *In Re Meenal w/o Muniyandi* [1980] 2 MLJ 299 have been cited in support of this proposition, a careful reading of the same does not hold true. What those cases, in fact, say is that 'the laws on citizenship and immigration rest solely on questions of public policy'; that 'Under the Immigration Ordinance, only the Executive has power to release the appellant. Whether or not the Executive should do so is a matter of policy for them, they have information and sources of information not available to the court and are moved by political, economic, social and cultural considerations which the court is not well equipped to apply, and judges should be slow to embarrass them into any course of action'. None of the cases cited equated the existence of ouster clauses, or matters concerning citizenship or immigration as 'non-justiciable'. The courts merely alluded to the fact that the court should be slow to enter into these areas for the subject matters of immigration and citizenship are often fraught with policy, political and administrative considerations. An example of a non-justiciable matter would be clemency or pardon where such matters are

within the prerogative of the Ruler of the realm and where mercy begins. A quick thumb through the law journals will readily yield results showing many challenges taken on immigration and citizenship matters. The success or otherwise of these challenges have not been for reasons of non-justiciability.

[16] Based on the above authority, it is in my considered opinion, that there is no prohibition to restrict this court from hearing the plaintiff's present application as the originating summons is not a review of the respondents' decision not to grant citizenship under art 15A of the Federal Constitution. Instead, this application requires a determination of the manner of interpretation of the Federal Constitution to the facts of the case, a consideration of proportionality to best serve the intent of the Constitution and the manner or result in which the respondents applied the law based on the Constitution.

[17] This is fully justiciable before this court and under the now settled basic structure doctrine as held by the Federal Court in *Alma Nudo Atenza v Public Prosecutor and another appeal* [2019] 4 MLJ 1; [2019] 5 CLJ 780 and also seen in *Sivarasa Rasiah v Badan Peguam Malaysia & Anor* [2010] 2 MLJ 333; [2010] 3 CLJ 507, *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 (FC) and *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545 (FC).

[18] Richard Malanjum, CJ in *Alma Nudo Atenza* had this to say about the basic structure doctrine:

> [72] This court has, on several occasions, recognised that the principle of separation of powers, and the power of the ordinary courts to review the legality of State action, are sacrosanct and form part of the basic structure of the FC (see: *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561; [2017] 5 CLJ 526 at para [90], *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545; [2018] 3 CLJ 145 at paras [48], [90]).
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> [73] In fact, courts can prevent Parliament from destroying the 'basic structure' of the FC (see: *Sivarasa Rasiah* at para [20]). And while the FC does not specifically explicate the doctrine of basic structure, *what the doctrine signifies is that a parliamentary enactment is open to scrutiny not only for clear-cut violation of the FC but also for violation of the doctrines or principles that constitute the constitutional foundation*.
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> [74] The role of the Judiciary is intrinsic to this constitutional order. Whether an enacted law is constitutionally valid is always for the courts to adjudicate and not for Parliament to decide. As rightly stated by Professor Sir William Wade (quoted by this court in *Indira Gandhi* at para [35]):
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> > ... it is always for the courts, in the last resort, to say what is a valid Act of Parliament; and that the decision of this question is not determined by any rule

of law which can be laid down or altered by any authority outside the courts. (Emphasis added.)

[19] It is thus in my considered view that the application under art 14(1)(b) of the Federal Constitution is justiciable and the reasons in which the respondents refuse citizenship to the plaintiff must be examined thoroughly in the interest of justice and constitutional proportionality.

[20] The question then arises as to whether the majority decision in *CTEB* means that the application before me is 'non-justiciable' to the extent that the Federal Court had already held that an illegitimate child must follow the nationality of the mother. I find that each application for citizenship is fact-sensitive and must be treated based on its' own peculiar set of facts.

[21] Furthermore, the facts of the present case may be distinguished from the facts of the case in *CTEB*. The application in *CTEB* is made under qualification Part II, s 1(b) of the Second Schedule, whereas this application is under the qualifications of s 1(a) and 1(e) respectively. Further, both counsels for the parties had agreed that the factual matrix of this case and *CTEB* are also different.

[22] Crucially of comparison is that the child in the case of *CTEB* was born in the Philippines, hold a passport issued by the Government of Philippines and is presumed a citizen of the Philippines. Whereas, the plaintiff was born in Malaysia, holds no passport and has no other citizenship anywhere else, presumed or otherwise.

[23] I therefore find that the decision and conclusion in the case of *CTEB*, whilst good law, is not directly applicable to this case. This does not mean that the respective ratio decidendi of the Federal Court in *CTEB* need not be followed or observed by this court. This means that each fact of this case and its' application of the Constitutional provisions, must be considered in its' own light whilst being guided by the several findings and approaches of the majority in *CTEB*.

Issue of alternative remedy

[24] This court shall now proceed to consider the respondents' preliminary contention that the plaintiff is restricted from seeking redress of this court as her father's application under art 15A of the Federal Constitution is still pending. In other words, the respondents claimed that this application is premature.

[25] It was the respondents' contention that:

(a) the plaintiff, through her father, had made the application on 9 August 2017 and ought to wait for a decision of the Minister before filing this application;

(b) the Minister must take time to meticulously go through the application and consider each point in the r 12 of the Citizenship Rules 1964 'checklist'; and

(c) the Court of Appeal authority of *Pendaftar Besar Kelahiran dan Kematian, Malaysia v Pang Wee See & Anor (applying on their behalf and as litigation representatives for Pang Cheng Chuen, a child)* [2017] 3 MLJ 308 is applicable where it was decided by Abang Iskandar JCA (as His Lordship then was) that:

> [42] In this case, the respondent could still apply to be a citizen by applying an invocation of art 15A of the Federal Constitution, namely application for citizenship by way of registration for consideration by the Minister. We noted too that he had written to respondent on that avenue but that the request was turned away without it being considered by the honourable Minister. That would mean that his request had not been subject to the honourable Minister's consideration. In other words, he had not exhausted his available avenue for redress. That avenue is still available for him to explore.

(d) the plaintiff must first exhaust all available legal remedies before seeking redress of this court.

[26] This court cannot agree with the submissions of the respondents as the need to exhaust all alternate remedies is not an absolute bar to an applicant seeking redress of the court, especially in matters concerning constitutional liberties.

[27] The test to consider whether a failure to exhaust all alternative remedies is fatal is a discretionary one for the court to decide as held in *Robin Tan Pang Heng @ Muhammad Rizal bin Abdullah (suing as public officer at Penang Turf Club) v Ketua Pengarah Kesatuan Sekerja Malaysia & Anor* [2011] 2 MLJ 457; [2010] 9 CLJ 505.

[28] In the present case, the application was made to the Minister in 2017. However, there has been no response whatsoever, be it a rejection, approval or even a request for more information from the Minister for the past four years. Discretion must always be exercised judiciously and I therefore cannot judiciously expect the plaintiff and her parents to continue holding their breath for the esteemed Minister's decision to the art 15A application.

[29] I also note a decision of the High Court in the case of *Lim Wan Feng v Lim Kiew Poh & Ors* [2020] 1 LNS 2370 which held that failure to exhaust the alternative method of an art 15A application is not fatal to an application

pursuant to art 14(1)(b). Justice Leonard Shim had in his decision held as follows:

> [22] Article 15A of the FC is a separate and distinct provision from art 14(1)(b). An application for citizenship by registration under art 15A of the FC falls under the purview of the Federal Government whereas citizenship under art 14(1)(b) is a fundamental constitutional right accorded to a citizen or the offspring of a citizen born on or after Malaysia Day under the Federal Constitution by operation of law. As the Government have not made a decision on the applicant's application under art 15A despite several follow up letters from the applicant, there is no decision made under art 15A for the applicant to appeal against or seek a review. This court will not at this stage review the application under art 15A. The application under art 15A stem from the revocation of the applicant's citizenship by the JPN and the Regional Registrar of Births and Deaths under the RBDO. As stated in my finding above, the revocation and deprivation of the applicant's citizenship was done in breach of the mandatory requirement prescribed in art 27 of the FC. The breach of art 27 which gives the applicant the right to be informed in writing of the grounds for deprivation of citizenship and the right to have the case referred to a committee of inquiry is tantamount to a breach of natural justice ...
>
> [23] Further, matters concerning citizenship under the Federal Constitution are within the purview of the courts and the applicant has set out the material facts which entitles her to make this application for declaratory and/or other reliefs in respect of her claim for citizenship under art 14(1)(b). *There is no express requirement that the applicant must exhaust alternative remedies under art 15A of the FC before making this application.* See *Madhuvita Janjara Augustin (suing through next friend Margaret Louisa Tan) v Augustin a/l Lourdsamy & Ors* [2018] 1 MLJ 307; [2018] 4 CLJ 758. From the peculiar facts and circumstances of this case, this court finds that it is unnecessary for the applicant to exhaust all remedies by applying under art 15A before coming to court. (Emphasis added.)

[30] In any event, nowhere is it stated in the Constitution or in Part III of the Second Schedule that an application under art 15A must be sought first or is a pre-condition to an application to this court. The path to citizenship under arts 14 and 15A are distinct and neither is one subservient or secondary to the other. Even assuming the Minister had decided to reject the art 15A application, there is no bar for the plaintiff to seek redress before this court.

[31] For the foregoing reasons above, this court is therefore of the considered view that the preliminary point raised by the respondents to be bereft of any merits and shall now proceed to consider the main issue in contention ie whether the plaintiff had satisfied the qualifications for citizenship as required under the law.

GENERAL PRINCIPLES OF THE LAW

[32] Justice Rohana Yusof PCA in Her Ladyship's pronouncement in the majority decision in *CTEB* most succinctly stated the general law and considerations of citizenship as follows:

> [125] The concept of citizenship law predated the formation of the Federation of Malaysia. It was there even before independence. Laws pertaining to citizenship in Malaysia then form part of the supreme law and no longer remain as ordinary law. These provisions too are entrenched in the FC in that, they are not easily amended as it requires the consent of the Conference of Rulers pursuant to art 159(5) of the FC. Even with the Proclamation of Emergency under art 150 as we are currently under, no emergency law may be passed which is inconsistent with provisions relating to citizenship (see art 150(6A)).
>
> [126] Taking into account the various political and social factors prevailing then, the framers of the FC had introduced four categories of citizenship together with the requisite qualifications stipulated in Part III of the FC ranging from arts 14 to 22.
>
> [127] There are four ways of acquiring Malaysian citizenship and they are by:
>
> (a) operation of law (art 14);
>
> (b) registration (arts 15, 15A, 16, 16A and 18);
>
> (c) naturalisation (art 19); or
>
> (d) incorporation of territory (art 22).
>
> [128] Of the four categories, the operation of law citizenship is almost automatic. One either fits the given criteria under the FC or one does not. The criteria are clearly stipulated in the FC and it does not require any exercise of discretion by the authority.
>
> [129] By operation of law, therefore entails a situation where at birth the person's status of citizenship will be so determined. It is a matter of birthright. This legal position is also as stated by Emeritus Professor Datuk Dr Shad Saleem Faruqi, in his book 'Our Constitution' (Sweet & Maxwell, Thomson Reuters 2019) at pp 178 and 179. In practical terms, a birth certificate will be issued right away upon registration of such birth. While the other three categories of citizenship by registration and naturalisation require an application to the authorities upon meeting the necessary conditions imposed under the FC (see Suffian 'An introduction to the Constitution of Malaysia' (3rd Ed, Pacifica Publications 2007) at pp 330–337).

[33] The applicable provisions in the Federal Constitution are reproduced herein for ease of reference as follows:

> PART II: FUNDAMENTAL LIBERTIES
>
> ARTICLE 14: CITIZENSHIP BY OPERATION OF LAW

(1) Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:

(a) every person born before Malaysia Day who is a citizen of the Federation by virtue of the provisions contained in Part I of the Second Schedule; and

(b) *every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule.*

(c) (Repealed).

SECOND SCHEDULE

PART II [ARTICLE 14(1)(b)]

(1) Subject to the provisions of Part III of this Constitution, the *following persons* born on or after Malaysia Day are citizens by operation of law, that is to say:

(a) *every person born within the Federation of whose parents one at least is at time of the birth either a citizen or permanently resident in the Federation*; and

(b) every person born outside the Federation whose father is at the time of the birth a citizen and either was born in the Federation or is at the time of the birth in the service of the Federation or of a State; and

(c) every person born outside the Federation whose father is at the time of the birth a citizen and whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow, registered at a consulate of the Federation or, if it occurs in Brunei or in a territory prescribed for this purpose by order of the Yang di- Pertuan Agong, registered with the Federal Government; and

(d) every person born in Singapore of whose parents one at least is at the time of the birth a citizen and who is not born a citizen otherwise than by virtue of this paragraph; and

(e) *every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph*.

2(1) A person is not a citizen by virtue of paragraph (a), (d) or (e) of section 1 if, at the time of his birth, his father, not being a citizen, possesses such immunity from suit and legal process as is accorded to an envoy of a sovereign power accredited to the Yang di-Pertuan Agong, or if his father is then an enemy alien and the birth occurs in a place under the occupation of the enemy.

(2) In section 1 the reference in paragraph (b) to a person having been born in the Federation includes his having been born before Malaysia Day in the territories comprised in the States of Sabah and Sarawak.

(3) *For the purposes of paragraph (e) of section 1 a person is to be treated as having at birth any citizenship which he acquires within one year afterwards by virtue of any provisions corresponding to paragraph (c) of that section or otherwise.*

SECOND SCHEDULE

PART III [Article 31]

Supplementary Provision Relation To Citizenship

Interpretation

17. For the purposes of Part III of this Constitution references to a person's *father or to his parent*, or to *one of his parents*, are in relation to a person who is illegitimate to be construed as references to his mother, and accordingly section 19 of this Schedule shall not apply to such a person.

[34] In the exercise of this court's function, I additionally remind myself that a right of citizenship is a fundamental right of fundamental importance as held in *Pham v Secretary of State for the Home Department* [2015] 3 All ER 1015. In this Country, the case of *The Speaker of Dewan Undangan Negeri of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v Ting Tiong Choon & Ors and other appeals* [2020] 4 MLJ 303; [2020] 3 CLJ 757, held that:

The deprivation of citizenship is a severe form of action against a citizen for having acquired foreign citizenship and reflected how seriously the FC views the act.

[35] Furthermore, it cannot be gainsaid that the common law concept of *jus soli* and *jus sanguinis* in respect of citizenship in Malaysia is of importance in reading the Constitution as it is today. These concepts are well stated in the case of *Pang Wee See* as follows:

[29] In determining citizenship of a person, two concepts are commonly applied, namely the concept of jus soli and the concept of jus sanguinis. *Jus soli* which means 'right of the soil', and commonly referred to as birth right citizenship, is the right of anyone born in the territory of a state to nationality or citizenship. The determining factor being the place or territory where a person was born. In the case of *jus sanguinis*, which in Latin means 'right of blood', is a principle of nationality law by which citizenship is not determined by place of birth but by having one or both parents who are citizens of the state. Viewed from the context of these two concepts, we are of the considered opinion that art 14(1)(b) read with s 1(a), Part II, Second Schedule of the Federal Constitution is a provision which is anchored on the elements of both the concepts of jus sanguinis and of jus soli, whereby citizenship of a person is traceable to the place of birth namely, Malaysia, as well as Malaysian citizenship of one of the person's parents (the right of blood) at the time of the person's birth, in order to be a Malaysian citizen by operation of law, under art 14(1)(b) read with s 1(a), Part II, Second Schedule of the Federal Constitution.

[36] Our learned Chief Justice, Tun Tengku Maimun Tuan Mat in the minority pronouncement in *CTEB* had this to say about *jus soli* and *jus sanguinis*:

[151] To reiterate the above passage, jus soli encapsulates the notion that a person is entitled to citizenship purely on the basis of the place where he is born irrespective of the citizenship status of his parents. Thus, if immigrant non-citizen parents from one country give birth to their child in a country which adopts the principle of only

jus soli, the child is automatically a citizen of that country by the fact of his birth there. Jus sanguinis on the other hand looks only to the citizenship status of the parent irrespective of where the child was born. So long as the parent (sometimes the father only and other times either parent) is a citizen, the child is automatically entitled to 'inherit' the citizenship status of that parent. As observed by Abang Iskandar JCA in the above-quoted judgment, our FC amalgamates both jus soli and jus sanguinis into its provisions.

[152] Looking at the citizenship scheme and structure of the FC as a whole, it is my interpretation that the framers of the FC intended that the conferral of citizenship be crafted as widely as possible to enable all relevant persons at the time of the formation of Malaya and later Malaysia the right to be conferred citizenship by operation of law. There are several indicators of this.

[37] The general rules of interpretation, to which I am guided, in dealing with a case of Constitutional interpretation has also been consistently held by our courts as follows. In *Alma Nudo Atenza*:

Hence, the provisions of the FC should be read harmoniously. Indeed the fundamental liberties provisions enshrined in Part II of the FC are parts of a majestic, interconnected whole and not each as lonely outposts.

...

It is well-established that 'a constitution must be *interpreted in light of its historical and philosophical context, as well as its fundamental underlying principles*.

[38] Justice Nallinini Pathmanathan FCJ dissenting in *CTEB* had observed as follows:

[228] Of importance and particular relevance in this case is also the rule that each of the fundamental constitutional principles is of equivalent importance and no one provision should be enforced so as to nullify or substantially prejudice or harm the other. As such, a construction should be adopted which has the effect of achieving *a harmonious interpretation* throughout, so as to protect and enforce the overall Constitution. This is a well-established rule and the construction which achieves harmony should be preferred to an alternative interpretation which would give rise to uncertainty and conflict.

The FC is an organic and evolving instrument

[229] A further adjunct to these general principles is that constitutional issues are not resolved by a mere reading of the meaning of the words without remembrance and acceptance that these matters are 'living' or organic matters that are constantly evolving. *Some degree of consideration ought to be accorded to the line of growth of concepts in relation to the constitutional provisions, otherwise we would remain locked and fossilised in 1963, without regard to the evolution of concepts and progress from then to date*. The necessities of the present day and societal needs remain fundamental issues that cannot be simply ignored, while attention is accorded to the literal meaning of the words in question. In short, the provisions of the Constitution should be construed bearing in mind the founding principles and doctrines on

which they were placed there, with due consideration given to progress, the nation's needs and the all-important component of pragmatism.

[39] The Federal Court in *Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener)* [2010] 2 MLJ 285 held that:

> [26] *NS Bindra's Interpretation of Statutes* (10th Ed) at p 1295 speaks of two theories of interpretation of Constitution namely, the mechanical and organic theories. At p 1296 it stated that organic theory is to be preferred. *'The organic method requires us to see the present social conditions and interpret the Constitution in a manner so as to resolve the present difficulties'*. From the authorities cited above our courts are inclined to the organic theory in the interpretation of the Constitution.

[40] Finally, it is of equal importance that I also consider and stand guided by the general rules of interpretation of statutory provisions as held recently in *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721 at p 735; [2020] 7 CLJ 561. Justice Vernon Ong FCJ succinctly summarised as follows at pp 734–741 (MLJ):

> [30] In our opinion, the rules governing statutory interpretation may be summarised as follows. *First, in construing a statute, effect must be given to the object and intent of the Legislature in enacting the statute.* Accordingly, the duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it. The court will not read words into a statute unless clear reason for it is to be found in the statute itself. Therefore, in construing any statute, the court will look at the words in the statute and apply the plain and ordinary meaning of the words in the statute. *Second, if, however the words employed are not clear, then the court may adopt the purposive approach in construing the meaning of the words used. Section 17A of the Interpretation Acts 1948 and 1967 provides for a purposive approach in the interpretation of statutes.* Therefore, where the words of a statute are unambiguous, plain and clear, they must be given their natural and ordinary meaning. The statute should be construed as a whole and the words used in a section must be given their plain grammatical meaning. It is not the province of the court to add or subtract any word; the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in the gaps disclosed. Even if the words in a statute may be ambiguous, the power and duty of the court 'to travel outside them on a voyage of discovery are strictly limited'. *Third, the relevant provisions of an enactment must be read in accordance with the legislative purpose and applies especially where the literal meaning is clear and reflects the purposes of the enactment. This is done by reference to the words used in the provision; where it becomes necessary to consider every word in each section and give its widest significance.* An interpretation which would advance the object and purpose of the enactment must be the prime consideration of the court, so as to give full meaning and effect to it in the achievement to the declared objective. As such, in taking a purposive approach, the court is prepared to look at much extraneous materials that bears on the background

against which the legislation was enacted. It follows that a statute has to be read in the correct context and that as such the court is permitted to read additional words into a statutory provision where clear reasons for doing so are to be found in the statute itself. (Emphasis added.)

COURT'S FINDINGS

[41] It was undisputed that the plaintiff was born in Malaysia after Malaysia Day, the first condition under art 14(1)(b) has thus been duly satisfied by the plaintiff.

[42] The court will proceed to consider whether the plaintiff had satisfied the first qualification under Part II, s 1(a), Second Schedule ie 'that every person born within the Federation of whose parents one at least is at the time of the birth either a citizen or permanently resident in the Federation'.

[43] On the face of s 1(a) qualification, the plaintiff has also satisfied this criterion considering that the plaintiff is a person born within the Federation of whose parents one at least, being the father, is a Malaysian citizen at the time of her birth.

[44] However, it was the respondent's contention that in reading s 1(a), this court must also consider and enforce Part III, s 17 of the Second Schedule which reads: 'For the purposes of Part III of this Constitution references to a person's father or to his parent, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother, and accordingly s 19 of this Schedule shall not apply to such a person'. The respondent argued strongly that based on the majority decision of *CTEB* which held that by virtue of s 17, an illegitimate child must follow the citizenship of the mother, and as such the plaintiff cannot be granted Malaysian citizenship.

[45] *CTEB* is distinguishable as it relates to an interpretation of s 1(b) and not for s 1(a), that legitimacy should be considered at the point of the Originating Summons application, and that where the court does not need to rely on an interpretation tool such as Part III, s 17 it need not refer to it.

[46] The criteria under s 1(a) clearly and literally states that so long as at least one of the parents of the plaintiff is a Malaysian, the plaintiff satisfies s 1(a) which was supported by the High Court decision on 4 September 2019 wherein the plaintiff was declared as the legitimate child of Ong Chin Hock who is a Malaysian. The official DNA report dated 18 November 2019 by the Chemist Department further strengthen the plaintiff's case that Ong Chin Hock and Luo Zhijuan are the biological father and mother of the plaintiff.

[47] Article 8 Federal Constitution guarantees a prohibition that there should be no discrimination, and all must be equally treated. The plaintiff's right of jus sanguinis vide her father must equally be recognised and carry some weight in law. It would be a breach of art 8 for there to be a distinction drawn against: (1) fathers; and (2) illegitimate children if s 17 is applied to s 1(a).

[48] Assuming I am wrong in my findings in respect of the qualification of the child under Part II, s 1(a), it must next be considered if the child satisfies the criterion under s 1(e). The child needs to only satisfies either one of this qualification before this court.

[49] In reading s 1(e), it must also be noted that the following s 2(3) classifies 'not born a citizen of any country' as 'For the purposes of paragraph (e) of section 1 a person is to be treated as having at birth any citizenship which he acquires within one year afterwards by virtue of any provisions corresponding to paragraph (c) of that section or otherwise'.

[50] It is also argued that the plaintiff here is stateless, and her statelessness is not disputed or cannot be disputed by the respondents. Therefore, this court is urged to adopt the decision in *Madhuvita* where the applicant there was deemed to have no Papua New Guinean citizenship and thus entitled under s 1(e) to have citizenship of Malaysia by law. It was held there that:

> [75] On the strength of these two documents alone, we find difficulty in accepting the respondents' contentions that the appellant is a citizen of the Independent State of Papua New Guinea. That status is a question of mixed fact and law and there is insufficient evidence to come to that conclusion, particularly when the appellant's birth was undisputedly, never registered under the Citizenship Act 1975 (Chapter 12) of Papua New Guinea. Had there been a certificate to that effect issued under s 5(4), the respondents' contentions would have a strong plausible basis. As it is, there is none and the suggestion that the appellant is thereby a citizen of Papua New Guinea is not one that the courts here should accept readily; more so on the particular facts in this appeal.
>
> [76] This is quite different from the position in *Pham v Secretary of State for the Home Department* [2015] 3 All ER 1015, a case concerning the deprivation of citizenship; a status described by Lord Reed as one of 'fundamental importance'. At p 1046, Lord Sumption dealt with the issue of Statelessness by considering whether the appellant there had Vietnamese citizenship at the time of his birth. Because the answer was in the affirmative, the Supreme Court concluded that the withdrawal of British nationality by the respondent did not render the appellant Stateless, a condition that would have contravened art 1(1) of the Convention Relating to the Status of Stateless Persons 1954 (Cmd 9505).
>
> [77] Coming back to the present appeal, in support of her application, the appellant has shown that she is not a citizen of Papua New Guinea. The appellant's birth was not registered in Papua New Guinea. It was registered here instead. We agree with the submissions of learned counsel for the appellant that if the declaration sought is

not given, if the appellant is not a citizen of the Federation, then she is Stateless. That State would not and cannot be said to be in the best interest and for the welfare of the appellant. Consequently, the appellant satisfies the terms of art 14(1)(b) read with s 1(e) of Part II of the Second Schedule to the Federal Constitution

[51] Firstly, the consideration point of s 1(e) criteria is 'not born a citizen of any country' meaning the plaintiff must first have already attained the citizenship of another Country at birth before the plaintiff cannot be entitled to qualify under s 1(e).

[52] Secondly, the Constitution has provided a deeming provision in s 2(3) which says that a for a period of one year after the person's birth, any citizenship that person acquires would be the deemed citizenship at birth.

[53] I find on an evaluation of the evidence and the position taken by parties in their submissions, both in written and oral form, that the plaintiff is stateless because she has no other citizenship apart from her classification as 'Bukan Warganegara' in her birth certificate.

[54] The plaintiff is born after Malaysia Day in Malaysia and has no other citizenship of any other country (after one year of her birth) and would automatically be entitled to citizenship by operation of law.

[55] In the upshot, I find that the plaintiff has satisfied the qualification of Part II, s 1(e) and ought to be entitled automatically by operation of law to be a Malaysian citizen. As is the case of the qualification under Part II, s 1(a), since the plaintiff has satisfied the first criteria of art 14(1)(b), a satisfaction of either one or both of the criteria in s 1(a) or 1(e) would enable her to attain citizenship.

CONCLUSION

[56] Accordingly, I find that the plaintiff has made out a case for this court to declare order in terms of the originating summons, paras 1 and 2, with no order as to cost.

Application allowed.

Reported by Ashok Kumar